

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

DAVID BRESSELSMITH,

Plaintiff

v.

NDOC, et al.,

Defendants

Case No. 2:22-cv-02084-GMN-VCF

ORDER

On March 2, 2023, the Court issued a screening order permitting claims under the Americans with Disabilities Act (“ADA”) and the Rehabilitation Act (“RA”) to proceed against the Nevada Department of Corrections (“NDOC”), and dismissing other claims with leave to amend by April 1, 2023. ECF No. 5. The Court specifically stated that if Plaintiff chose not to file an amended complaint, this action would proceed only on the claims under the ADA and RA against the NDOC. *Id.* at 14. The deadline to amend has expired, and Plaintiff has not filed an amended complaint.

It is therefore ordered that, consistent with the Court’s March 2, 2023, screening order, this action will proceed only on Plaintiff’s claims under the ADA and RA against the NDOC.

It is further ordered that, given the nature of the claims that the Court has permitted to proceed, this action is stayed for 90 days to allow Plaintiff and defendant an opportunity to settle their dispute before an answer is filed or the discovery process begins. During this stay period and until the Court lifts the stay, no other pleadings or papers may be filed in this case, and the parties will not engage in any discovery, nor are the parties required to respond to any paper filed in violation of the stay unless specifically ordered by the Court to do so. The Court will refer this case to the Court’s Inmate Early Mediation Program, and the Court will enter a subsequent order about that matter. Regardless, on or before 90 days from the date this order is entered, the Office of the Attorney General will file the report form attached to this order about the results of the 90-day stay, even if a stipulation for dismissal is entered before the end of the stay. If the parties

1 proceed with this action, the Court will then issue an order setting a date for defendant to file an
2 answer or other response. Following the filing of an answer, the court will issue a scheduling order
3 setting discovery and dispositive motion deadlines.

4 The Court reminds the parties that “settlement” may or may not include payment of money
5 damages. It also may or may not include an agreement to resolve Plaintiff’s issues differently. A
6 compromise agreement is one in which neither party is completely satisfied with the result, but
7 both have given something up and both have obtained something in return.

8 It is further ordered that if any party seeks to have this case excluded from the inmate
9 mediation program, that party will file a “motion to exclude case from mediation” no later than 21
10 days before the date set for mediation. The responding party will have 7 days to file a response.
11 No reply will be filed. Thereafter, the court will issue an order, set the matter for hearing, or both.

12 It is further ordered that if Plaintiff needs an interpreter to participate in the mediation
13 program, he will file a notice identifying the interpretation language and the need for the interpreter
14 within 30 days from the entry date of this order.

15 It is further ordered that the Attorney General’s Office must advise the Court within 21
16 days of the entry date of this order whether it will enter a limited notice of appearance on behalf
17 of the Interested Party identified below for the purpose of participating in the Early Mediation
18 Program. No defenses or objections, including lack of service, will be waived because of the filing
19 of the limited notice of appearance.

20 It is further ordered that the Clerk of Court will (1) add the Nevada Department of
21 Corrections to the docket as an Interested Party and (2) electronically serve copies of this order,
22 the screening order (ECF No. 5), and Plaintiff’s complaint (ECF No. 6) on the Office of the
23 Attorney General of the State of Nevada by adding the Attorney General to the Interested Party on
24 the docket. This does not indicate acceptance of service.

25 DATED: April 20, 2023

26
27 

28 Cam Ferénbach
United States Magistrate Judge

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

DAVID BRESSELSMITH,

Plaintiff

v.

NDOC, et al.,

Defendants

Case No. 2:22-cv-02084-GMN-VCF

**Report of Attorney General Re: Results of
90-day Stay**

**NOTE: ONLY THE OFFICE OF THE ATTORNEY GENERAL WILL FILE THIS
FORM. THE INMATE PLAINTIFF MAY NOT FILE THIS FORM.**

On _____, the Court issued its order stating that it had conducted its screening under 28 U.S.C. § 1915A, and that certain specified claims in this case would proceed. Additionally, the Court stayed this action for 90 days and ordered the Office of the Attorney General of the State of Nevada to file a report indicating the status of the case at the end of the 90-day stay. By filing this form, the Office of the Attorney General hereby complies.

REPORT FORM

[Identify which of the following two situations (identified in bold type) describes the case, and follow the instructions corresponding to the proper statement.]

Situation One: Mediated Case: The case was assigned to mediation by a court-appointed mediator during the 90-day stay. [If this statement is accurate, check **ONE** of the six statements below and fill in any additional information as required, then proceed to the signature block.]

_____ A mediation session with a court-appointed mediator was held on _____ [enter date], and as of this date, the parties have reached a settlement (even if paperwork to memorialize the settlement remains to be completed). (If this box is checked, the parties are on notice that they must **SEPARATELY** file either a contemporaneous stipulation of dismissal or a motion requesting that the Court continue the stay in the case until a specified date upon which they will file a stipulation of dismissal.)

_____ A mediation session with a court-appointed mediator was held on _____ [enter date], and as of this date, the parties have not reached a settlement. The Office of the Attorney General therefore informs the Court of its intent to proceed with this action.

_____ No mediation session with a court-appointed mediator was held during the 90-day stay, but the parties have nevertheless settled the case. (If this box is checked, the parties are on notice that they must **SEPARATELY** file a contemporaneous stipulation of dismissal or a motion requesting that the Court continue the stay in this case until a specified date upon which they will file a stipulation of dismissal.)

_____ No mediation session with a court-appointed mediator was held during the 90-day stay, but one is currently scheduled for _____ [enter date].

_____ No mediation session with a court-appointed mediator was held during the 90-day stay, and as of this date, no date certain has been scheduled for such a session.

_____ None of the above five statements describes the status of this case. Contemporaneously with the filing of this report, the Office of the Attorney General of the State of Nevada is filing a separate document detailing the status of this case.

* * * * *

Situation Two: Informal Settlement Discussions Case: The case was NOT assigned to mediation with a court-appointed mediator during the 90-day stay; rather, the parties were encouraged to engage in informal settlement negotiations. [If this statement is accurate, check **ONE** of the four statements below and fill in any additional information as required, then proceed to the signature block.]

_____ The parties engaged in settlement discussions and as of this date, the parties have reached a settlement (*even if the paperwork to memorialize the settlement remains to be completed*). (*If this box is checked, the parties are on notice that they must SEPARATELY file either a contemporaneous stipulation of dismissal or a motion requesting that the Court continue the stay in this case until a specified date upon which they will file a stipulation of dismissal.*)

_____ The parties engaged in settlement discussions and as of this date, the parties have not reached a settlement. The Office of the Attorney General therefore informs the Court of its intent to proceed with this action.

_____ The parties have not engaged in settlement discussions and as of this date, the parties have not reached a settlement. The Office of the Attorney General therefore informs the Court of its intent to proceed with this action.

_____ None of the above three statements fully describes the status of this case. Contemporaneously with the filing of this report, the Office of the Attorney General of the State of Nevada is filing a separate document detailing the status of this case.

Date: _____

Signature of attorney

Printed name

Address

Telephone number

Email address